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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RONALD CHRISTOPHER TAYLOR, SR., Defendant and Appellant.	F075479 (Super. Ct. No. 1484032) **OPINION**

APPEAL from an order of the Superior Court of Stanislaus County. Linda A. McFadden, Judge.

Robert F. Kane, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and John W. Powell, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Appellant Ronald Christopher Taylor, Sr., was convicted by jury of battery on a spouse causing a traumatic condition (Pen. Code, § 273.5, subd. (a)[1]). The trial court ordered appellant to pay $4,466.30 in restitution to reimburse the California Victim Compensation and Government Claims Board (Board) for funds paid through the restitution fund on behalf of the victim and her daughter. Appellant appeals the restitution order. He contends the trial court erred by prejudging the issue and failing to conduct an in camera review of the records the Board used to establish the amount of assistance to be paid on behalf of the victims. (§ 1202.4, subd. (f)(4)(C).) Alternatively, appellant argues trial counsel's failure to specifically request the court to review the records in camera constituted ineffective assistance of counsel. Appellant also contends the court erred by determining the accrual date of interest on the award from the date of the offense rather than the date the Board paid the victims' claims. We remand the matter to the trial court to determine a statutorily approved date for interest to commence accruing. We affirm the order in all other respects.

FACTS

We set forth below those facts and events relevant to this appeal.

Prosecution Case-in-Chief

In February 2015, Kristine K.[2] was married to appellant. She lived with appellant, her teenage daughter, her younger daughter, her adult daughter, and her grandson.

On the afternoon of February 1, 2015, Kristine was expecting appellant to come home from a fishing trip. She was concerned appellant would be upset when he got home because he had been unable to reach her earlier. When appellant arrived home,

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1 All further statutory references are to the Penal Code unless otherwise indicated.

2 We refer to Kristine K. and minors involved in this case by their first names to protect their privacy. No disrespect is intended.

Kristine was in the shower. Kristine saw appellant when she got out of the shower and could tell he was upset. Appellant stood in the bathroom doorway and accused Kristine of doing drugs and being unfaithful. Kristine pushed by him, so she could get dressed. Appellant got angry, and Kristine attempted to calm him down. Appellant approached Kristine, and Kristine saw a volatile look in appellant's eyes. Appellant pushed Kristine into their bedroom, causing her to fall over the railing of the bed. Appellant then grabbed Kristine by her neck from behind with two hands, lifting her upward. Kristine got loose and moved toward the bathroom, which was connected to the bedroom by two stairs leading down. Appellant pushed or kicked her from behind, causing Kristine to fall down the two stairs that led into the bathroom. Kristine landed on the bathroom floor on her hands and knees. Appellant then jumped on top of her back. Kristine tried to get away. Appellant grabbed Kristine and slammed her head into the laundry cabinet. At some point, appellant put his hand near Kristine's face. Kristine bit his wrist and got out from underneath him. Kristine ran out of the house. Appellant and Kristine's youngest daughter Sophia testified that she saw her mother and father arguing and that Kristine yelled for Sophia to call the police. Sophia called 911, and police responded to the scene.

Kristine testified her neck and head hurt severely and her knees and elbows were injured by the incident. Kristine had to see a chiropractor for quite some time because of the incident. She had swelling around her neck and jawline. A few weeks prior to the incident, a dog ran past Kristine out the front door, causing bruising on her legs, but the bruises had disappeared by the time of the incident.

Defense Case

Appellant testified in his own defense. He testified that in the afternoon of February 1, 2015, he got into an argument with Kristine about the house being in disarray and his gun safe being open with his grandson nearby. Kristine pushed him twice, and he pushed her once in response. While appellant and Kristine were yelling, appellant saw Sophia, and told Sophia to go away. At that time, Kristine approached appellant from

behind, grabbed his shoulder, and yelled for Sophia to call 911. When Kristine grabbed appellant's shoulder, he pushed her off him, causing her to fall down the two stairs to the bathroom. Appellant also fell and landed on top of Kristine. They struggled to get up. Appellant testified he did not hit or push Kristine while they were on the ground.

One of appellant and Kristine's neighbors testified she saw Kristine "hobbling around" the day before the incident. Kristine's knee was swollen. When the neighbor asked Kristine what happened, Kristine told the neighbor she got hurt by sticking her knee out to stop a dog from going out the front door.

Appellant's brother testified he saw Kristine a few days before the incident. Kristine had braces on her neck and leg. Kristine told appellant's brother a dog had caused her injuries by dragging her down the stairs. Kristine told appellant's brother she hurt her neck, back, and leg. Appellant's brother spoke to appellant upon appellant's release from jail a few weeks after the incident. Appellant told his brother he "got into it" with Kristine and injured her neck, back, and leg. Appellant's brother asked appellant why Kristine would say appellant injured her when she was injured before appellant got home from his fishing trip. Appellant responded by saying that Kristine said he caused the injury.

Prosecution Rebuttal

The police officer who responded to the scene testified she did not recall Kristine moving slowly or deliberately. She did not recall Kristine's knee being swollen. She did not see Kristine wearing a neck or knee brace, nor did she see any braces inside when she examined the house. The only neck brace she saw Kristine wear was the one she saw paramedics put on Kristine at the scene.

Restitution Hearing

The prosecutor requested the court to order victim restitution in the amount of $4,466.30, payable to the Board. The amount consisted of $578.30 for medical expenses, $1,782 for mental health counseling for Kristine, and $2,106 for mental health counseling

for "Bryanna K.," who the probation officer identified at the hearing as Kristine's daughter.[3] The request was accompanied by certified copies of redacted bills submitted to and paid by the Board on behalf of Kristine and Bryanna. The letters certifying the records stated they were signed under penalty of perjury by a representative of the Board. The providers on all bills were redacted. The medical bills for Kristine appear to be for various pain relief massages and chiropractic services. The chiropractic bills indicated a "date of current illness [or] injury" as January 31, 2014. The dates of service for Kristine's medical services ranged from February 20, 2015, through June 8, 2015. The bills for Kristine's mental health services indicated a "date of current illness [or] injury" as February 25, 2015, and the dates of service ranged from February 25, 2015, through August 21, 2015. The bills for Bryanna's mental health services indicated a "date of current illness [or] injury" as February 27, 2015, and the dates of service ranged from March 6, 2015, through December 18, 2015.

At the restitution hearing, appellant's trial counsel stated the bills attached to the claim were "so thoroughly redacted" that he could not determine what they were for. He argued on that basis that causation could not be established.

Defense counsel also pointed out that Bryanna was not a witness to the crime and could not be considered a victim for restitution purposes. The probation officer argued that as Kristine's daughter, Bryanna was entitled to mental health services.

Defense counsel continued to argue causation could not be established by the documents. He mentioned that one of the bills was for a 90-minute massage. The court responded that chiropractors have massage therapists, and massage therapy is a good way to recover from injuries.

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[3] A review of the entire record indicates that Bryanna is Kristine's daughter and appellant's stepdaughter and that she was a teenager at the time of the incident.

Defense counsel also noted the "current date of illness [or] injury" on many of the bills, namely, January 31, 2014, predated the date of the incident of February 1, 2015. The court stated the incident could have aggravated a preexisting injury, entitling Kristine to restitution for services taking place after the incident. The court pointed out that all the dates of service on the bills occurred after the date of the incident.

Defense counsel again argued the bills did not establish causation. The court responded:

> "[T]he Court's inferring that the state board's not going to pay out unless there's some causal relationship. And it doesn't have to be proven beyond a reasonable doubt; all that has to be claimed is that the victim's claiming that. And if they claimed that to the state board, that's all that's required, and that's why they pay out. I mean, I don't have to hold a hearing with the victim here for the victim to say that. If the state board says these are what the victim claims she incurred as a result of this, then that's sufficient even if she had some preexisting [illness.]"

The court went on,

> "[I]f she had a preexisting illness [or] if she had previously been going to get counselling and then, as a result of what happened, she needed to go back to get more counselling, that's all that's required. I mean … that is how the law works[.] [If] there's some need for further services as a result of conduct of someone, then that's all that's required. And I can't really inquire of the victim whether she had, you know—this was really caused or if she had some—by this incident or maybe it was more caused by a preexisting issue. All that's required is for the victim to state … this is the amount of counselling she needed to … help herself recover or help her family recover from what took place."

The court then informed counsel it could hold a hearing on the certification of the records. The following colloquy occurred:

> "[DEFENSE COUNSEL]: [T]he Court's only issue is the lack of certification. Besides that, without victim testimony that … this incident caused the—solely the board's testimony, the Court would accept these and order the restitution as requested?

> "THE COURT: So if someone were to come from the state board as they certified on the first page and say, 'These are bills we received from the victim,' claiming these were amounts, as they've indicated, paid out, then, for bills from this incident then, yes, the Court's got to accept that. The Court really doesn't have much choice. I don't think—you know, I mean, obviously, I guess you can contest whether—I guess you can contest that, but I don't really see any basis to—if the victim's going to claim that to the state board, there really is no right to cross-examine the victim on this."

The court confirmed the Board had paid out the amount requested and ordered restitution be paid to the Board in that amount, namely, $4,466.30 with interest.

The court then suspended imposition of appellant's sentence and placed him on probation for a period of three years. Appellant filed a timely appeal.

DISCUSSION

I. Restitution Award to the Board

Victim restitution is constitutionally and statutorily mandated in California. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1386.) If the restitution fund pays expenses for the victim, the amount paid "shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered." (§ 1202.4, subd. (f)(4)(A) (subdivision (f)(4)(A).) The Legislature has provided: "The amount of assistance … shall be established by copies of bills … reflecting the amount paid by the [B]oard…. Certified copies of these bills provided by the [B]oard and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the [B]oard, shall be sufficient to meet this requirement." (§ 1202.4, subd. (f)(4)(B).)

"If the defendant offers evidence to rebut the presumption established by [section 1202.4, subdivision (f)(4)], the court may release additional information contained in the records of the [B]oard to the defendant only after reviewing that information in camera

and finding that the information is necessary for the defendant to dispute the amount of the restitution order." (§ 1202.4, subd. (f)(4)(C).) In offering evidence pursuant to section 1202.4, subdivision (f)(4)(C) to obtain the Board's records, the defendant need not fully rebut the presumption; rather, this subdivision imposes a duty on the defendant of producing evidence. (*People v. Lockwood* (2013) 214 Cal.App.4th 91, 101–102 (*Lockwood*).) If the court releases information after reviewing the records in camera, the defendant may use his original evidence and the sealed material in his effort to fully rebut the subdivision (f)(4)(A) presumption. (*Lockwood*, at p. 101.) In order to fully rebut the presumption, the defendant has the burden to prove "the nonexistence of the presumed fact—that is, to prove his conduct is *not* a cause in fact of the Board's payment." (*Ibid*.)

Section 1202.4, subdivision (f) provides the court *may* release information to the defendant after reviewing the records in camera. We read the word "may" as indicating the court has discretion whether to review the records. Accordingly, we examine appellant's claim for an abuse of discretion. (See *In re Richard E.* (1978) 21 Cal.3d 349, 354.) A restitution order will only be reversed if not supported by any rational basis. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.)

Appellant claims the trial court improperly "prejudged" the issue of whether appellant could have rebutted the subdivision (f)(4)(A) presumption and acted pursuant to a mistaken belief it had no discretion but to accept the Board's determination. We disagree. We find the trial court was within its discretion by implicitly finding appellant did not offer evidence tending to rebut the subdivision (f)(4)(A) presumption and by not reviewing the records in camera.

Appellant's primary argument is that "discrepancies" appearing on the face of the bills themselves constituted evidence tending to rebut the subdivision (f)(4)(A) presumption. These "discrepancies" include the "current date of illness [or] injury" for Kristine's medical bills predated the incident and the bills for Kristine's and Bryanna's

mental health services indicated the "current date of illness [or] injury" as a month after the incident. We find no merit in this argument.

Embedded in the subdivision (f)(4)(A) presumption is that the restitution fund compensation process is reliable. (See *People v. Cain* (2000) 82 Cal.App.4th 81, 86 [Reimbursement billings by the Board are "inherently reliable."].) The Legislature has outlined at length the eligibility requirements that applicants must meet for compensation through the restitution fund. (Gov. Code, § 13955.) These requirements include the applicant must be a victim or derivative victim of the crime and must have suffered an injury. The injury must have been caused by the defendant's criminal conduct and result in an economic loss. (*Ibid*.) The Legislature has outlined the procedure through which the Board is to investigate claims, including that it must verify circumstances of the crime and amounts paid. (Gov. Code, § 13954, subd. (a).) The Board determined Kristine and Bryanna were eligible for compensation despite the "current date[s] of illness [or] injury" listed on the bills. Because the information was before the Board, it is unlikely a review of the records would reveal anything of use to appellant to fully rebut the presumption. The trial court's inference that the Board would not pay unless a causal relationship existed was reasonable even in light of the "discrepancies" appellant points out.

Appellant cites *Lockwood*, where the appellate court found error in the trial court's failure to review the Board's records in camera. Appellant argues the concerns raised by defense counsel were "far more specific" and "far surpassed" the evidence offered to rebut the subdivision (f)(4)(A) presumption in *Lockwood*. Appellant's citation to *Lockwood* does not alter our conclusion. The defendant in *Lockwood* was convicted of inflicting corporal injury upon a cohabitant. (*Lockwood, supra*, 214 Cal.App.4th at p. 94.) The defendant was ordered to pay over $20,000 to reimburse the Board for payments it had made to the victim's medical providers. (*Id*. at p. 95.) The majority of those costs were attributed to a seven-day hospitalization triggered by the victim's suicide attempt more than five months after the assault. (*Id*. at pp. 97-98.) At the restitution

hearing, the defendant offered a declaration that the victim had filed in dissolution proceedings against her former husband. (*Id.* at p. 97.) The declaration recounted several instances when the victim's husband had committed domestic violence against her, including one incident that took place a month before the defendant's assault. (*Id*. at p. 98.) It was not clear whether the Board had knowledge of the declaration when it made its payments. (*Ibid*.) The court initially found that the marital issues described in the declaration " 'could easily have caused the [hospitalization] as much or more likely than the [incident involving the defendant]' " and that the defendant had rebutted the subdivision (f)(4)(A) presumption. (*Lockwood,* at p. 98.) The trial court later indicated it had thought more about the matter and decided the presumption that the defendant caused the hospitalization could not be overcome by the information about the victim's husband. (*Id.* at p. 99.) On that basis, it declined to review the Board's records. (*Ibid*.)

The appellate court in *Lockwood* found the trial court had not only abused its discretion in failing to review the records, but also the records should have been disclosed to the defendant because "an in camera review of the additional records would have shown that they were relevant to the dispute." (*Lockwood, supra,* 214 Cal.App.4th at p. 101.) The trial court was faulted for "relying on an erroneous interpretation of [section 1202.4,] subdivision (f)(4)" by requiring the defendant to actually rebut—rather than merely present evidence tending to rebut—the presumption that the Board's payments were made as a direct result of the defendant's criminal conduct. (*Id*. at p. 102.) The appellate court nevertheless deemed the error harmless because "the records established that defendant's criminal conduct played more than an infinitesimal or theoretical part in the emotional or mental injuries for which the victim was treated … and defendant could not have successfully used the Board's records to rebut the presumption that the amount of assistance provided … was a direct result of his criminal conduct." (*Id*. at p. 104.)

Lockwood is distinguishable. In *Lockwood,* the defendant offered a declaration that may not have been before the Board when it made its determination whether to pay.

As we have discussed, in this case, appellant's defense counsel merely pointed out issues on the face of the bills themselves, which on the facts of the case, did not constitute evidence tending to rebut the subdivision (f)(4)(A) presumption. Appellant raises for the first time on appeal the evidence at trial that Kristine had been injured by a dog shortly before the incident is evidence tending to rebut the subdivision (f)(4)(A) presumption. We accept this evidence is closer to the type required to rebut the subdivision (f)(4)(A) presumption because it may not have been before the Board when it made its determination to pay. Even if the injuries from the dog had been raised by trial counsel, however, that showing would not have required the court to hold an in camera review of the records. In *Lockwood*, the hospitalization at issue had no clear connection on the record with the defendant's conduct. This is why the declaration the defendant offered was relevant. Here, we can determine from the record before us a clear link between the chiropractic treatment Kristine received and appellant's conduct. Kristine testified appellant injured her neck, head, elbows, and knees. She specifically testified that she needed to see a chiropractor because of the injuries she sustained due to appellant's criminal conduct. On the facts of this case, appellant could not show he did not play at least an infinitesimal or theoretical part in Kristine's injuries simply by showing, without more, that she had a preexisting injury. In *Lockwood*, the appellate court's review of the Board's records revealed the victim's hospitalization was at least in part due to the defendant's conduct, causing the appellate court to deem any error the court committed by not reviewing the records harmless.

The court did not abuse its discretion by relying on the Board's investigation and conclusion regarding causation pursuant to subdivision (f)(4)(A) nor by concluding that it had no basis not to accept the Board's conclusion.[4] Even if the court was acting under a

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[4] Appellant's trial counsel briefly mentioned at the restitution hearing that Bryanna was not a witness to the crime and should not be considered a victim. On appeal, appellant claims Bryanna "was not present" during the crime, but he does not fully

mistaken belief it had no discretion to review the records, because we find appellant did not offer any evidence tending to rebut the presumption, any error is harmless. (See *People v. Watson* (1956) 46 Cal.2d 818, 837.) We reiterate that in order to rebut the subdivision (f)(4)(A) presumption, appellant would have had to prove he was not a direct cause of the injuries for which treatment was sought; or put another way, that his conduct played no more than an infinitesimal or theoretical part in the injuries. (*Lockwood, supra,* 214 Cal.App.4th at pp. 102-103.) The trial court's restitution award to the Board was supported by a rational basis.

Appellant also argues that his trial counsel's failure to specifically request an in camera review of the Board's records constituted ineffective assistance of counsel. To prevail on such a claim, he must establish that (1) the performance of his trial counsel fell below an objective standard of reasonableness and (2) prejudice occurred as a result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *People v. Anderson* (2001) 25 Cal.4th 543, 569.) "When examining an ineffective assistance claim, a reviewing court defers to counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance. It is particularly difficult to

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develop the argument of why this is relevant to whether the subdivision (f)(4)(A) presumption was rebutted.

We first note appellant's claim that Bryanna was not home is not supported by the record. Kristine testified her children were home at the time of the incident. The officer who responded to the scene directly following the incident spoke to Bryanna.

Further, as a child of a victim, Bryanna may qualify as a victim of the crime entitled to restitution if she sustained economic loss as a result of the crime. (§ 1202.4, subd. (k)(3)(A).) She may also qualify as a derivative victim entitled to compensation through the restitution fund. (Gov. Code, §§ 13951, subd. (c), 13955.) As a child who lives in a home where domestic violence took place, she is presumed to have been injured whether she was a witness to the violence or not. (Gov. Code, § 13955.)

The evidence at trial supported Bryanna's need for mental health treatment; appellant himself testified at trial that Bryanna (appellant actually referred to his "teenage stepdaughter," but we can infer from the whole record that he was referring to Bryanna) was "really disturbed" by the incident.

prevail on an *appellate* claim of ineffective assistance. On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.)

The second prong of the *Strickland* test is not satisfied. Appellant's trial counsel's specific request for an in camera review of the records would have been unsuccessful because appellant did not offer any evidence tending to rebut the subdivision (f)(4)(A) presumption.

II. Interest Calculation

The trial court ordered appellant to pay interest per annum on the award to the Board "from February 1, 2015, the date of loss." Appellant contends the trial court abused its discretion in ordering him to pay interest calculated from February 1, 2015, because the date of the incident was not the date of "loss" as required by statute. We agree.

Section 1202.4, subdivision (f) provides, in pertinent part, that apart from specified exceptions, the court shall require the defendant to pay restitution in every case "in which a victim has suffered *economic loss* as a result of the defendant's conduct." (Emphasis added.) Section 1202.4, subdivision (f)(3) provides that the dollar amount of restitution shall fully reimburse the victim or victims for "every determined *economic loss* incurred as the result of the defendant's criminal conduct," including "[i]nterest, at the rate of 10 percent per annum, that *accrues as of the date of sentencing or loss*, as determined by the court." (§ 1202.4, subd. (f)(3)(G), emphasis added.) Because section 1202.4, subdivision (f)(3) expressly refers to economic loss, we conclude that interest pursuant to section 1202.4, subdivision (f)(3)(G) may commence to accrue only on the

date the victim actually incurs an economic or financial loss, or, as provided by the subdivision, from the date of sentencing.

Here, the date of injury, or the date of the incident, was February 1, 2015. The restitution order was made on March 14, 2017. The services the victims required were all rendered after the date of injury, and the Board clearly compensated the victims after the dates of service. Because the financial loss caused by these bills accrued after the date of injury, there was no rational or substantial basis for the trial court to order interest to commence accruing as of February 1, 2015. We cannot determine from the record when the Board suffered its economic loss. Accordingly, we remand the matter to the trial court to determine a statutorily approved date for interest to commence accruing on the Board's compensation to the victims.

DISPOSITION

We remand for the trial court to determine a statutorily approved date for interest to commence accruing on the California Victim Compensation and Government Claims Board's compensation to the victims.

In all other respects, the order is affirmed.

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DE SANTOS, J.

WE CONCUR:

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SMITH, Acting P.J.

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SNAUFFER, J.